IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

(1) DEVA RAM VS. STATE OF RAJASTHAN & ORS.
(S.B.C.Writ Petition No.7067/03)
(2)OM PRAKASH VS. STATE OF RAJASTHAN & ORS.
(S.B.C.Writ Petition No.7081/03)

Date of order :- 15th December,2006.

PRESENT

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Mr. L.S. Jodha, Advoate for the petitioners.
Mr. Rameshwar Dave, Dy.Government Advocate.

The aforesaid two writ petitions were heard together because they raise a common question of fact and law and therefore they are being decided by a common order.

The petitioner Deva Ram has come up with the grievance that the respondents have not granted to him the due bonus marks on the basis of his sports certificate. The respondents initiated process of selection for appointment on the post of Physical Training Instructor(for short "P.T.I.") by advertisement dated 28.7.2003. According to the order issued by the respondents a candidate having participated in state level, national level and international level sports competitions was entitled to grant bonus

marks. Further guidelines were issued by the respondents on 31.7.2003 on the same subject.

The case of the petitioner is that when he secured second position in the state level games and sports therefore he must be awarded bonus marks. The respondents allowed bonus marks not only to those who had participated in the games and sports and secured first and second position but also to those who had merely participated in the sports meet competition/games. According to the petitioner he has secured second position in the state level competition and therefore he should be awarded more marks than those who merely participated. He has therefore prayed that he should be awarded five extra marks and the respondents in implementing their policy of bonus marks as contained in their Circular dated 31.7.2003 should be required to give effect to their proclamation made in the order dated 10.3.2000 where they offered to give more marks to those who have won medals in the sports meet held at the state, national and international level.

In the second writ petition filed by Omprakash also, a similar grievance has been raised against the backdrop of the fact that petitioner secured third position in the state level games and

sports therefore he should be awarded more marks.

Whether or not to grant the benefit of bonus marks for the purpose of recruitment in their services is the sole discretion of the respondents. This in fact touches upon the policy domain on the State. If the State in its policy with a view to giving boost to the sports activities in the State has decided to award bonus marks to all those who participate in state level and national level tournaments/sport meets, the petitioner cannot be allowed to complain that they are being discriminated against. When the State Government can decide not to have any policy of awarding bonus marks, it can at the same time also decide to make award of bonus marks conditional. Merely because the petitioners have won medals and others just participated, would not make such classification as unreasonable because in order to qualify the test to reasonable qualification, such classification has to be only broadly reasonable and the microscopic classification for that purpose cannot be insisted upon.

The question came up for consideration before this Court in S.B.Civil Writ Petition No.5098/03 "Arvind Pareek vs. State of Rajasthan & Ors., decided on 1st November, 2006 wherein the

challenge was made to the validity of the order dated 31.7.2003 precisely on the same ground that the respondent cannot treat unequals equally inasmuch as the case of those who merely participated in the meet and those who having participated and won the medals cannot be treated at par. This Court on consideration of the law on subject, while repealing the challenge held as under :-

> "It is essentially a matter of policy for the Government to decide whether or not to give any bonus marks on the basis of participation in sports tournaments and if the Government decides to give such benefits, it is also the prerogative of the State to extend such benefits on certain prescribed conditions. This policy is intended to promote sports and give incentive and encouragement to those who participate in the sports and resultantly somewhat leg behind in the academics. In extending the benefit of bonus marks to all those who participate in State and National Tournaments and not just to those who win medals. Object of the policy appears to be to boost participation in such sports meets and cover a larger section and more number of candidates. The policy however is the domain of the Government and not of the courts. If the Government has decided to broadly categorize the sports persons in two classes, namely, those who participate in State Level Tournaments and those who participate at the National Level Tournaments, whether or not there should be a third category is exclusively for the Government to decide. What should be the extent of the total bonus marks and outer limit for awarding such marks has also to be decided by the Government. If the Government has provided that the candidate would be entitled to the maximum 15 marks on the basis of best of the certificates produced by him, the court by its judicial fiat cannot require it to increase such limit or provide for a separate category. The outer limit of the marks appears to have been fixed on the rational of ensuring that the

> element of merit in the competition is not completely eliminated and the incentive is confined to a reasonable limit. In my considered view, this Court in its extra ordinary jurisdiction under Article 226 of the Constitution of India cannot interfere in such policy matter. "

In the light of above,I do not see any good ground for interference in the present writ petition. Both the writ petitions are accordingly dismissed with no order as to costs.

(MOHAMMAD RAFIQ),J.